

**IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA**

ANDREA L. MILLER,

Plaintiff,

vs.

Case No. 08-CV-271-FHM

MICHAEL J. ASTRUE,
Commissioner, Social Security
Administration,

Defendant.

OPINION AND ORDER

Plaintiff's Motion for Attorney's Fees and Expenses Under the Equal Access to Justice Act [Dkt. 23] is before the Court for decision.

Plaintiff seeks an award of attorney fees in the amount of \$5,257 under the Equal Access to Justice Act (EAJA), 28 U.S.C. § 2412. Plaintiff requests that the court order the EAJA attorney fee award to be mailed directly to her attorney.

The Commissioner has no objection to court approval of an attorney fee in the amount of \$5,257, but does object to any assertion that Plaintiff's attorney should receive direct payment of the EAJA award by virtue of Plaintiff having executed an assignment to her attorney. The Commissioner states that the general procedure used by the Commissioner in "effectuating court orders awarding EAJA fees" to one represented by an attorney is:

The Commissioner certifies the order to the Department of the Treasury for payment. Afterward, the Department of the Treasury issues payment by check to the order of the plaintiff, in care of his attorney, and mails the check to the plaintiff's attorney.

[Dkt. 26, p. 2]. Based on the Commissioner's usual practice, the previous rulings of this court, and those of the Tenth Circuit including those in which claimants were represented by counsel in this case, *Winslow v. Astrue*, 269 Fed.Appx. 838, 838-39 (10th Cir. 2008), the Commissioner asserts that there is no need for the court to include mailing instructions in its order.

Based on the absence of any objection to the amount of the fee request, the undersigned finds that the amount requested is reasonable and that Plaintiff should be awarded EAJA fees in the amount of \$5,257. To the extent that Plaintiff's motion can be read to suggest that the fees should be paid directly to Plaintiff's counsel, that request is denied. The fee award should be issued pursuant to the Commissioner's usual practice. If attorney fees are also awarded under 42 U.S.C. § 406(b) of the Social Security Act, counsel shall refund the smaller award to Plaintiff pursuant to *Weakley v. Bowen*, 803 F.2d 575, 580 (10th Cir. 1986).

Plaintiff's Motion for Attorney's Fees and Expenses Under the Equal Access to Justice Act [Dkt. 23] is GRANTED in part, and DENIED in part as specified herein.

SO ORDERED this 8th day of June, 2009.


FRANK H. McCARTHY
UNITED STATES MAGISTRATE JUDGE